



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 500

IN THE MATTER OF MIDDLESEX PAVING CORPORATION

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Middlesex Paving Corporation ("Middlesex") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court pursuant to G.L. c. 268B, §4(j).

On January 25, 1994, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Middlesex. The Commission concluded that inquiry, and, on September 27, 1994, found reasonable cause to believe that Middlesex violated G.L. c. 268A, §3.

The Commission and Middlesex now agree to the following findings of facts and conclusions of law:

1. Middlesex is a group of affiliated companies incorporated to do business in Massachusetts. Middlesex performs a variety of construction services including paving, bridge construction and repair, landscaping, roadside development and road surfacing. Seventy-five percent of Middlesex's Massachusetts contracts consists of publicly bid and funded projects.

2. During 1990, Middlesex successfully bid for Massachusetts Highway Department ("MHD") contracts valued at over \$5 million. These contracts involved construction, paving and maintenance services and were awarded to Middlesex as the lowest qualified bidder.

3. At all times relevant, Stephen Berlucchi ("Berlucchi") was the MHD highway maintenance engineer. As such, he was responsible for supervising and inspecting all maintenance work on state highways performed by state contractors, including Middlesex.

4. On December 22, 1990, Middlesex hosted a Christmas party at the Marriott Long Wharf Hotel in Boston. The explicit purpose of the party was to foster goodwill with employees and individuals doing business with Middlesex. The party included cocktails, dinner, entertainment and overnight hotel accommodations for certain guests. More than 400 Middlesex employees and their families attended the party.

5. Berlucchi attended Middlesex's party and received hotel accommodations as Middlesex's guest. The cost to Middlesex was approximately \$116.

6. During 1991, Middlesex successfully bid for MHD contracts valued at over \$4 million. These contracts involved construction, paving and maintenance services and were awarded to Middlesex as the lowest qualified bidder.

7. At all times relevant, Anthony Salamanca ("Salamanca") was a MHD district highway director and Edward O'Toole ("O'Toole") was a MHD civil engineer. As such, each was responsible for supervising and inspecting work performed by state contractors, including Middlesex.

8. On December 21, 1991, Middlesex again hosted a Christmas party at the Marriott Long Wharf Hotel in

Boston. The explicit purpose of the party was to foster goodwill with employees and individuals doing business with Middlesex. The party included cocktails, dinner, entertainment and overnight hotel accommodations for certain guests. More than 400 Middlesex employees and their families attended the party.

9. Berlucchi attended the party and stayed overnight at the hotel as Middlesex's guest. The cost to Middlesex was \$116. Salamanca, O'Toole and their spouses also attended Middlesex's party and received hotel accommodations as Middlesex's guests. The cost to Middlesex was approximately \$170 per couple.

10. During 1992, Middlesex successfully bid for MHD contracts valued at over \$28 million. In 1992, Middlesex also had existing contracts with the Massachusetts Turnpike Authority ("MTA") valued at over \$400,000.

11. At all times relevant, Robert Calo ("Calo"), Ronald Iannaco ("Iannaco") and Francis Sandonato ("Sandonato") were MHD civil engineers. George Ward ("Ward") was the MHD Manager of Operations for Essex County. As such, each was responsible for supervising and inspecting work performed by state contractors, including Middlesex.

12. At all times relevant, a certain MTA assistant division engineer was responsible for supervising and inspecting work performed by state contractors, including Middlesex.^{1/}

13. On December 19, 1992, Middlesex hosted a Christmas party at the Marriott Long Wharf Hotel in Boston. The explicit purpose of the party was to foster goodwill with employees and individuals doing business with Middlesex. The party included cocktails, dinner, entertainment and overnight hotel accommodations for certain guests. More than 400 Middlesex employees and their families attended the party.

14. Calo, Iannaco, Salamanca, Sandonato, Ward and their spouses attended Middlesex's party and received hotel accommodations as Middlesex's guests. The cost to Middlesex was approximately \$170 per couple.

15. Berlucchi and his spouse also attended the dinner but did not stay overnight at the hotel. The cost to Middlesex was \$108.

16. The MTA assistant division engineer, O'Toole and their spouses attended the December 19, 1992 Middlesex party and received hotel accommodations at the Boston Harbor Hotel. The cost to Middlesex was approximately \$250 per couple.

17. Section 3(a) of G.L. c. 268A prohibits, otherwise than as provided by law, the giving or offering of anything of substantial value to any public official for or because of any official act performed or to be performed by such employee.^{2/} The Commission has found that private parties violate §3 when they entertain government officials (who are in a position to benefit them) in an effort to generate goodwill. See e.g., *In re John Hancock*, 1994 SEC ____; *In re EUA Cogenex*, 1992 SEC 607; *In re State Street Bank*, 1992 SEC 582; *In re Stone & Webster*, 1991 SEC 552; *In re Rockland Trust*, 1989 SEC 416.

18. By providing dinner, entertainment and overnight accommodations to public officials with the intent to generate and maintain goodwill with these public employees who had official responsibilities concerning Middlesex contracts, Middlesex gave each of these state employees something of substantial value for or because of an official act performed or to be performed by each of them, thereby violating G.L. c. 268A, §3.^{3/}

19. The Commission is aware of no evidence that any public official took any official action concerning Middlesex's public contracts in return for attending the party(s). However, even though the public officials were invited only with the intent to foster official goodwill, the invitation was nevertheless impermissible.^{4/}

20. Middlesex fully cooperated with the Commission's investigation.

21. Middlesex has taken prompt action to prevent this activity from reoccurring.^{5/}

In view of the foregoing violation of G.L. c. 268A by Middlesex, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Middlesex:

(1) that Middlesex pay to the Commission the sum of six thousand dollars (\$6,000.00) as a civil penalty for violating G.L. c. 268A^{6/}; and

(2) that Middlesex waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement or any other related administrative or judicial proceedings to which the Commission is or may be a party.

Date: October 12, 1994

^{1/} Because of an ongoing Commission investigation, the MTA employee is not identified in this Disposition Agreement.

^{2/} In the past, the Commission has considered entertainment expenses in the amount of \$50 to constitute "substantial value". P.E.L. 88-1. See *Commission Advisory No. 8* (issued May 14, 1985).

^{3/} For §3 purposes, it is unnecessary to prove that any gratuities given were generated by some specific identifiable act performed or to be performed. In other words, no specific *quid pro quo* corrupt intent need be shown. Rather, the gift may simply be an attempt to foster goodwill. It is sufficient that a public official, who was in a position to use his authority in a manner that would affect the giver, received a gratuity to which he was not legally entitled, regardless of whether that public official ever actually exercised his authority in a manner that benefitted the gift giver. See *Commission Advisory No. 8*. See also *United States v. Standerfer*, 452 F. Supp. 1178, (W.D.P.A. 1978), aff'd other grounds, 447 U.S. 10 (1980); *United States v. Evans*, 572 F.2d 455, 479-482 (5th Cir. 1978).

^{4/} As discussed above in footnote 2, §3 of G.L. c. 268A is violated even where there is no evidence of an understanding that the gratuity is being given in exchange for a specific act performed or to be performed. Indeed, any such *quid pro quo* understanding would raise extremely serious concerns under the bribe section of the conflict of interest law, G.L. c. 268A, §2. Section 2 is not applicable in this case, however, as there was no such *quid pro quo* between Middlesex and the public employees.

^{5/} Middlesex created a position within their company to monitor expenditures and educate its employees concerning conflict of interest matters.

^{6/} This amount is approximately three times the value of the \$2,030 in prohibited gratuities Middlesex provided to public employees.